

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

MARLIN MAURICE DUMAS,

Petitioner,

v.

ACTION NO. 2:13-cv-398

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2254. ECF No. 1. In his Petition, Dumas, by counsel, challenged the constitutionality of his sentence, after he pled guilty on May 19, 1997, and was convicted in the Circuit Court for the City of Norfolk of capital murder, malicious wounding, two counts of robbery, and two counts of abduction. On July 18, 1997, the Circuit Court for the City of Norfolk sentenced Dumas to life in prison without parole for capital murder, plus 50 years in prison for the other five convictions.

In his Petition, Dumas argued that the United States Supreme Court's decision in Miller v. Alabama, 132 S. Ct. 2455 (2012) announced a new rule that is retroactively applicable to his case, now before the Court on collateral review.

Specifically, Dumas argued that under Miller, his sentence of life imprisonment without parole for a homicide committed while he was under the age of eighteen violates the Eighth Amendment's prohibition on cruel and unusual punishment.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B)-(C), and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation, entered on May 13, 2014, recommended granting the Respondent's Motion to Dismiss and dismissing the Petition with prejudice. ECF No. 9. On June 20, 2014, a Final Order was issued granting the Motion to Dismiss, adopting the Report and Recommendation, and ordering that judgment be entered in favor of the Respondent. ECF No. 11.

On July 7, 2014, Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit"). ECF No. 13. On June 15, 2016, the Fourth Circuit vacated the judgment of the district court and remanded the case for further proceedings consistent with the Supreme Court's opinion in Montgomery v. Louisiana, 136 S. Ct. 718, 732 (2016), which held that Miller "announced a substantive rule that is retroactive in cases on collateral review." ECF Nos. 19-20.

The matter was referred for a recommended disposition to a United States Magistrate Judge, pursuant to the Court's Standing Order on Assignment of Certain Matters to United States Magistrate Judges (April 1, 2002), for further proceedings in accordance with the remand of the United States Court of Appeals for the Fourth Circuit. ECF No. 22.

On July 14, 2017, the Magistrate Judge issued a Report and Recommendation recommending the Respondent's Motion to Dismiss, be **DENIED**; Dumas' Petition be **GRANTED**; and Dumas' sentence in the Circuit Court for the City of Norfolk be **VACATED** in its entirety and his case be **REMANDED** to the Circuit Court for disposition on his conviction in accordance with Miller and Montgomery. ECF No. 41. The parties were advised of their right to file written objections to the Report and Recommendation. Neither the Petitioner nor the Respondent filed objections.

Despite no objections, given the import of this decision, the Court has reviewed de novo the Magistrate Judge's Report and Recommendation. See Fed. R. Civ. P. 72(b)(3). After review, the Court fully accepts the findings and recommendations of the Magistrate Judge, and accordingly, hereby **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 41, in its entirety as the Court's own opinion. Therefore, the Respondent's Motion to

Dismiss, ECF No. 5, is **DENIED**; the Petition, ECF No. 1, is **GRANTED**; and the Petitioner's sentence in the Circuit Court for the City of Norfolk is **VACATED** in its entirety and his case is **REMANDED** to the state circuit court for disposition on his conviction in accordance with Miller and Montgomery. The Clerk shall enter judgment in favor of the Petitioner pursuant to this Final Order. For the reasons stated herein, and in the Report and Recommendation, the court declines to issue a certificate of appealability.

The Clerk shall forward a copy of this Final Order to counsel of record for the Petitioner and the Respondent.

It is so **ORDERED**.

/s/  
**Rebecca Beach Smith**  
Chief Judge  
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REBECCA BEACH SMITH  
CHIEF UNITED STATES DISTRICT JUDGE

August 10, 2017